

Comments By Chinese Taipei

CONDITION OF SALE, OBJECTIVE AND QUANTIFIABLE
DATA

Thank you Chair for giving me the floor.

My delegation would like to thank Mexico for submitting the draft case study on the valuation of goods imported under a franchise agreement. We also like to express our appreciation to China and the U.S. for their comments on this case study.

My delegation shares the same view with China and the U.S. that the royalties are paid for the rights related to the operation of the stores, and not for the intellectual property rights related to the inputs.

In addition, my delegation would like to complement the opinion with following perspective.

Even if it is considered that the royalties are related to the imported supplies, my delegation would like to refer to Advisory Opinion 4.5 which describes a similar case. In that case, the importer makes and sells 6 types of cosmetics under Company M's trademark and is required to pay Company M a royalty calculated as 5% of its annual gross sales of all cosmetics sold under Company M's trademark. The importer normally purchased one essential ingredient of cosmetics from Company M. This committee had already expressed the view that the royalty is payable to Company M irrespective of whether the importer uses the Company M's ingredients or those from other suppliers. Therefore, it is not a condition of the sale of the goods.

Now, let us get back to the case submitted by Mexico. According to paragraph 5.3 of the Development and Franchise Contract, which is Annex 1 to Doc VT1038E1a, Company A is required to pay company B royalties in the amount of 6% of the gross sale of each store operated by the company regardless whether or not the products are made of supplies obtained from company B.

Under the context of the aforementioned opinion expressed by this committee, the royalties may not be regarded as a condition of sale of the imported supplies between company A and company B. Therefore the royalties may not be added to the price being paid or payable for the imported supplies.

Thank you, Chair.